



June 14, 2001

Ms. Linda Cloud
Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

OR2001-2537

Dear Ms. Cloud:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148440.

The Texas Lottery Commission (the "commission") received a request for the following information:

1. All documents filed with the Charitable Bingo Operations Division of the Texas Lottery Commission by Bettina Corporation since June 1, 2000.
2. All documents filed with the Charitable Bingo Operations Division of the Texas Lottery Commission by the manufacturer of the "Cadillac Bingo" electronic cardminder since June 1, 2000.

You state that this information may be excepted from disclosure under sections 552.101 and 552.110 of the Government Code. You make no arguments in support of these exceptions, but you have notified the attorney for the third parties whose proprietary interests may be implicated by the request for information, including the Bettina Corporation. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have considered the asserted exceptions and reviewed the submitted information.

Neither Bettina Corporation, its attorney, nor any of the third parties in interest responded to the section 552.305 notice. Absent arguments from a third party, we have no basis to

conclude that any of the submitted information is excepted from disclosure under section 552.110. See Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990) (same). Thus, you may not withhold any of the submitted information under section 552.110.

We have also not received any comments regarding the application of section 552.101. We find, however, that some of the information within the submitted documents is protected by common law privacy and is therefore excepted from disclosure by section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses both common law and constitutional privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

This office has held that personal financial information not relating to the financial transaction between an individual and a governmental body is protected by common law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). But even personal financial information is not protected by common law privacy if its disclosure advances a legitimate public interest. In addition, corporations and companies do not have a right of privacy under the common law. See Open Records Decision No. 620 (1993). The determination of whether the public's interest in obtaining highly intimate and embarrassing information is sufficient to justify its disclosure must be made on a case-by-case basis. Open Records Decision No. 373 (1983).

Here, the personal financial information appears in background disclosure forms submitted to the commission by individuals and companies applying for licenses to manufacture bingo supplies, devices, and equipment. Based on our review of the submitted documents, we find that some of the personal financial information is protected by common law privacy and, therefore, must be withheld under section 552.101. We have marked the documents accordingly.

Next, we find that some of the submitted information is excepted from disclosure under section 552.130. Section 552.130 provides, in relevant part:

- (a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, you must withhold all the Texas driver's license numbers under section 552.130.

We also find that certain information is protected by section 552.136. The Seventy-seventh Legislature recently added section 552.136 to the Public Information Act,¹ which makes bank account numbers confidential. Senate Bill 694 was passed on May 14, 2001, and became effective when it was signed by the Governor on May 26, 2001. It provides, in relevant part, as follows:

Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS.

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.136). Thus, you must withhold the bank account numbers that appear in the submitted documents under section 552.136 of the Government Code.

¹The Legislature also enacted two other bills that added a section 552.136 to the Public Information Act. One is House Bill 2589, which makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). The other is Senate Bill 15, which makes information maintained by family violence shelter centers confidential. *See* Act of May 14, 2001, 77th Leg., R.S., S.B. 15, § 1 (to be codified at Gov't Code § 552.136). In addition, Senate Bill 694 enacted the same language from House Bill 2589 regarding the confidentiality of e-mail addresses, but codified it as section 552.137 of the Act.

We also find that social security numbers appear in the submitted documents. Social security numbers may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the commission pursuant to any provision of law, enacted on or after October 1, 1990.

To summarize: First, because we received no third-party comments, you may not withhold any of the submitted information under section 552.110. Second, we find that some of the submitted personal financial information is protected by common law privacy and must be withheld under section 552.101. Third, you must withhold all Texas driver's license numbers under section 552.130. Fourth, you must withhold all bank account numbers under section 552.136. Finally, the social security numbers that appear in the submitted documents may be confidential under federal law, depending on when and how they were obtained by the commission. All of the remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 148440

Enc. Submitted documents

c: Mr. Brian O'Toole
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(w/o enclosures)